



Legal Update

Multiple actions within a very short period of time held to be one continuous act of “harassment” under MGL c 258E

Orla O. v. Patience P., Appeals Court 20-P-1076 (August 12, 2021)

Relevant facts

August 6, 2019, the juvenile defendant and her two friends confronted the plaintiff at a mall. The group told the plaintiff to go out to the parking lot so they could fight. The plaintiff refused and tried to walk away but she was followed by the group. The plaintiff went into a family bathroom to avoid them. When the plaintiff opened the door to leave, she found the group waiting for her outside the door. She was pushed back into the bathroom. The group then entered the bathroom, locked the door, and began beating her. The group kicked and punched the plaintiff and the defendant “smashed” the plaintiff’s head into the wall causing her to bleed. The attack ended when a mall employee walked into the bathroom and called security. As the group was being removed from the bathroom, the defendant told the plaintiff that she would stab her if she told anyone what happened.

The plaintiff filed a complaint under MGL c 258E and obtained a temporary harassment prevention order (HPO). The defendant appealed the HPO arguing that the incident involved one continuous act of harassment and not three distinct acts as required by the statute.

Discussion

Chapter 258E defines "harassment" in pertinent part as:

"[three] or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property."

The issue before the court was whether the different acts of the defendant – punching, smashing the plaintiff’s head against the wall, and threatening the plaintiff when the attack was over - constituted three distinct acts of harassment or one continuous act.

For specific guidance on the application of these cases or any law, please consult your supervisor or your department’s legal advisor or prosecutor.

In this case, the entire incident occurred within a very short period of time, approximately 10 – 11 minutes. The court found that the conduct was continuous “without any temporal or material pause or interruption.” For these reasons the court determined that to separate each action taken by the defendant based upon the type of conduct would be an “arbitrary and unconvincing distinction in the application of G.L. c 258E.”

The acts of the defendant in this case constituted one continuous act of harassment, not three different acts as required by the statute. Based upon these facts, the HPO should not have issued and the court ordered the HPO to be vacated.

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